

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on January 13, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 127, 1/8/1999; SB 49,
1/8/1999
Executive Action: SB 88; SB 61

HEARING ON SB 127

Sponsor: SENATOR MIGNON WATERMAN, SD 26, HELENA

Proponents: Neil Peterson, Department of Revenue
Kati Kintli, Montana Tavern Association
Rich Miller, Gaming Industry Association

Opponents: None

Opening Statement by Sponsor:

SENATOR MIGNON WATERMAN, SD 26, Helena, introduced **SB 127** as a simple bill which clarifies existing practice as to who has control over the day-to-day functions of a corporation or entity owning an alcohol beverage license. This legislation ensures that all individuals who have control over the business decisions of licensed liquor entities are qualified to do so. The bill also ensures Department of Revenue approval when a licensed business entity changes its corporate form.

Proponents' Testimony:

Neil Peterson, Process Lead of the Customer Service Center, Department of Revenue, which includes the liquor licensing function, said that this legislation will provide clearer direction to individuals seeking an ownership interest in licensed liquor establishments regardless of their choice of business entity. He distributed a handout which illustrated the current criteria required by an individual applicant requesting an on-premise consumption license, the criteria required by each individual shareholder that becomes an owner of 10% or more of the corporation's outstanding stock, the criteria required by an individual that acquires an interest in a licensed establishment other than a corporation, and Department approval as required prior to a change in the business entity, **EXHIBIT (tas09a01)**.

Mr. Peterson said that **SB 127** will clarify confusion regarding the qualification process necessary when making changes in corporate ownership.

Mr. Peterson also introduced an amendment which corrects a drafting error. One section was put in the off-premise part of Section 16-1-401, and it should have been in the on-premise part, Section 16-4-401, **EXHIBIT (tas09a02)**.

Kati Kintli, Montana Tavern Association, testified in support of this legislation. The bill does clarify existing law and existing practice with the Montana Department of Revenue Licensing Bureau. She said that the Tavern Association does have a concern with the proposed amendment by the Department of Revenue regarding individuals who make business decisions or have control over the operation of the license. They must meet the requirements for an individual applicant listed in Section 2(a). That would mean that anybody, including perhaps a manager or a director or an officer, would have to qualify. The Association feels that that is too broad and too sweeping and would like to

work with the Department and **SEN. WATERMAN** to perhaps clarify that language regarding individuals who make business decisions.

Rich Miller, Gaming Industry Association, said that his association concurs with the Tavern Association in that they support the legislation but also feel that the language needs to be clarified as to individuals who make business decisions.

Opponents' Testimony: None

Questions from the Committee and Responses:

SEN. ELLIS asked **SEN. WATERMAN** whether the concerns of the Montana Tavern Association and the Gaming Industry Association were justified and seemed to be something that could be worked out, and **SEN. WATERMAN** replied that it is something that can be worked out and clarified.

SEN. STANG asked **Mr. Peterson** how long the process would take when a business changes ownership. **Mr. Peterson** replied that anytime you have a change of ownership of a liquor license, there are some statutory timelines that drag it out a little bit longer. Most of the time the Department can get everything done in about four to five months.

SEN. STANG asked why, for just the transfer of a liquor license, the Department of Justice has to do an investigation if there is no gaming involved. **Mr. Peterson** responded that the statute requires that a thorough investigation be done and the Department of Revenue contracts with the Department of Justice to do that investigation.

CHAIRMAN DEVLIN asked what costs were involved in a transfer, and **Mr. Peterson** said the costs associated with this is \$100.

SEN. ELLINGSON said he understands that there is an open understanding that even though the Department rules and statutes prohibit more than one license per individual, that there are ways that individuals have manipulated the situation to obtain ownership interests in more than one license. He asked **Mr. Peterson** if the proposed legislation says that one shareholder who has a 10% ownership interest in one business entity would be able to own 10% in another business entity that also owns a license, or if they are limited to just one 10% ownership interest. **Mr. Peterson** replied that a person cannot have more than 10% ownership in an all-beverage license and will have to meet all the requirements of an individual for ownership. There is not a prohibition against having an ownership in more than one beer and wine license.

Closing by Sponsor:

SEN. WATERMAN reiterated that these changes will provide clear direction in the case of individuals who have an ownership or wish to have an ownership interest in a liquor license, and she urged passage of this bill.

HEARING ON SB 49

Sponsor: SENATOR CHARLES "CHUCK" SWYSGOOD, SD 17, DILLON

Proponents: Ray Beck, Department of Natural Resources and Conservation
John Tubbs, Department of Natural Resources and Conservation
Bill Leonard, Midwest Assistance Program, Department of Natural Resources and Conservation
Gloria Paladichuk, Richland Economic Development
Alan Rollo, Teton Watershed Projects
Mike Volesky, Montana Association of Conservation Districts
Lucy Hansen-Galles, Montana Rural Water Systems Inc.
Tom Patten, Montana Association of Mines and Geology
Dennis Burr, Montana Taxpayers Association

Opponents: Gail Abercrombie, Montana Petroleum Association
Jerome Anderson, Shell Oil Company

Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, SD 17, Dillon, introduced **SB 49** as an act changing the allocation of the resource indemnity trust and groundwater tax proceeds and of the metal mines tax proceeds and changing the distribution of the interest earnings from the RIT. He said this bill is meant to provide some stability to the allocation and to eliminate significant ending fund shortages which have been backfilled with General Fund monies. The RIT revenues are not meant to fund agency budgets and administrative expenses for two reasons: 1) RIT revenues have not grown over the past three bienniums and agency budgets have. Thus, the RIT cannot continue to support those growing budgets, and this has led to the negative fund balance and General Fund backfill. 2) The RIT was never meant to fund general government. It was intended to cover cleanup and mitigation as it relates to our natural resource removal.

SEN. SWYSGOOD said that **SB 49** responds to both of these issues. It allocates funds for natural resource projects rather than agency budgets, which is why the RIT was established. To accomplish this, all of DNRC's appropriations were shifted out of the RIT account into the General Fund with the exception of the bureau which administers the grant programs. These total approximately \$6.5 million over the biennium. **SEN. SWYSGOOD** said that **SB 48** is a companion bill to **SB 49** which takes monies that had been used to fund the administration of the State Lands Trust and frees up the General Fund that went to fund the State Lands Agencies, which is also about \$6.5 million. So it's a swap, there is no impact on the General Fund with those two bills passing together. He stressed that this bill is tied to **SB 48** in the fact that if **SB 48** doesn't pass, then this bill won't pass either.

Proponents' Testimony:

Ray Beck, Administrator of the Conservation Resource Development Division of the Department of Natural Resources and Conservation, stated that **SB 49** addresses both tax policy and budget issues surrounding the RIT. This legislation will accomplish three things. First, it will increase the renewable resource grant funds by \$2 million, which will provide \$1.5 million for grants and an additional \$500,000 for grants to local governments, and he then provided the DNRC's report to the Legislature of the renewable resource grant loan program which demonstrates that the Department has had 62 grants for over \$6 million, **EXHIBIT (tas09a03)**. Second, the groundwater assessment program, which is administered by the Bureau of Mines, will receive a stable source of funding which will actually be less than what their tax dollars were originally set up for out of this account, but it will be a stable amount. And third, it will fund the orphan share program, which is administered by DEQ. This program was created to fund remediation projects on contaminated sites where the people responsible for the contamination are either bankrupt or no longer exist.

Mr. Beck also handed out a booklet on the resource indemnity tax trust and also the coal tax trust and the accounts surrounding those, **EXHIBIT (tas09a04)**. Page 2 of that booklet shows the breakdown of the RIT account. He also provided written testimony from **Ralph Peck, Director of the Montana Department of Agriculture, EXHIBIT (tas09a05)**.

John Tubbs, Department of Natural Resources and Conservation, said that the bill appears rather complex, but there are really only three sections that change the allocation of taxes and interest. **Mr. Tubbs** said that Section 3 is the first section

that actually affects tax allocation. It is the allocation of the metalliferous mine tax. Those taxes are paid by precious metal producers that have gross product in excess of \$250,000.

SB 49 amends that section, increasing the allocation to the orphan share account from 8.5% to 15.5%. It eliminates the allocation to the groundwater assessment and reclamation development grant account.

Mr. Tubbs moved on to Section 4, which is the allocation of resource indemnity groundwater assessment taxes, a tax paid by coal producers and other mineral producers. In addition, this section of law allocates a portion of the oil and gas taxes paid by the industry. In fact, those taxes account for about 60% of the revenues that flow into the various areas.

Finally, **Mr. Tubbs** reported that Section 5 is the interest allocation of the RIT trust. The biggest change is the increase from \$1 million to \$2 million a year for renewable resources. \$300,000 of interest is allocated for the groundwater assessment program, and the allocation to the orphan share account has been eliminated.

According to **Mr. Tubbs**, these are the key sections of the bill. The rest of the bill is driven because of those changes. As far as the fiscal note, this is a net zero change. Money is being moved from one place to another; everything adds up to zero.

Mr. Tubbs then provided a spreadsheet that shows the breakdown, **EXHIBIT (tas09a06)**, and a graph showing the flow of RIT proceeds and interest for the 2001 biennium, **EXHIBIT (tas09a07)**. He pointed out that on the bottom of the front page, the second column shows a negative \$1.79 million. That negative necessitated the development of some amendments, **EXHIBIT (tas09a08)**. The goal in drafting this concept was to shift the reliance of agencies away from tax proceeds. The fact is, with the negative beginning fund balance, lower revenues than anticipated, and growth and budgets larger than planned for, a negative was created. The amendments for the bill would pull back some of the metal mines and resource indemnity groundwater assessment taxes. More still goes to orphan share, but only slightly.

Bill Leonard, Midwest Assistance Program, said that the mission of his program is to work with small rural communities that have a serious water or wastewater problem that requires major renovation or initial system construction. The cornerstone for these projects is mostly the DNRC grant. **Mr. Leonard** said this is not a real large grant, but that it plays a major part in making these things affordable for communities. The planning

grant that is written into this bill is going to help small communities get started on some of these major projects.

Gloria Paladichuk, Richland Economic Development, Richland County, testified in support of increasing the allocation for the renewable resources grant loan pool. She said that with vision 2005 objectives in mind, providing for additional resources to partner with evolving projects in need of financial aid is critical.

Alan Rollo, Sun River and Teton Watershed Projects and Cascade County Conservation District, appeared in support of **SB 49**. He said that this legislation will go a long way in making it possible for the people of Montana to accomplish some of these on-the-ground projects that are needed around the state on natural resource issues.

Mike Volesky, Montana Association of Conservation Districts, said that funding natural resource agencies from the General Fund as they should be leaves RIT for on-the-ground local projects as was originally intended. Conservation districts conduct natural resource projects with this money, such as stream bank stabilization projects, reclamation of saline seeps, groundwater studies and hydrologic assessments, mine cleanups, et cetera.

Mr. Volesky read in part the policy designating the resource indemnity trust, which is 15-38-102: "It is the policy of the State of Montana to indemnify its citizens for the long term loss of value resulting from the depletion of its mineral resource base." He said that means that nonrenewable resources are taxed to supplement the renewable resource base with that spending.

Lucy Galles, Montana Rural Water Systems Incorporated, testified in support of **SB 49** because it will double renewable resource grant program funds for community drinking water and wastewater programs, as well as providing for important planning grant funds for large-scale projects.

Tom Patten, Montana Bureau of Mines and Geology, said that he is the program leader for the groundwater assessment program. He said he supports **SB 49** because it will provide a stable source of funding for the groundwater assessment program. Also, he said the data from the groundwater assessment program is available to every constituency that has need for water data in Montana.

Dennis Burr, Montana Taxpayers Association, said his organization supports **SB 49** because it provides a more accurate allocation of the RIT revenues.

Opponents' Testimony:

Gail Abercrombie, Montana Petroleum Association, favored the principle that more monies will be going into resource indemnity issues. She said that it has always been the principle of the Montana Petroleum Association to get the money into the trust fund and the interest will do the work.

Ms. Abercrombie said that the monies going into the orphan share straight out of the tax is \$400,000 and also \$400,000 of the interest, but that she had a concern about the \$1.8 million. She said she realizes that some funds need to go into the orphan fund, and that's fine. She said she also had a concern with the \$600,000 going into the groundwater assessment. If you add the \$600,000 in interest and the other \$600,000, that's twice what is prioritized for the Board of Oil and Gas to do well plugging in a biennium.

Jerome Anderson, Shell Oil Company, said that Shell produces about 40% of the crude oil in the State of Montana, and thus pays a significant part of the RIT tax money. He said it frustrates him that people who refuse to let the oil industry operate in their sections of the state request funds from this fund to support projects in their particular areas. He said he agrees with Ms. Abercrombie and does not support the bill.

Tom Daubert, Lobbyist for Montana Association of Oil, Gas and Coal Counties, submitted written testimony in opposition of **SB 49, EXHIBIT (tas09a09).**

Questions from Committee Members and Responses:

SEN. ELLINGSON said that **Mr. Tubbs** had characterized the bill as just taking money from one pot and putting it into another. He asked **Mr. Tubbs** which pot is getting bigger and which pot is getting smaller. **Mr. Tubbs** said that the bill reduces the allocations to fund agencies which have been funded with a combination of tax and interest funds for the past three bienniums, and interest before that, and instead funds renewable resource grants, the groundwater assessment program and orphan share.

SEN. ECK asked **Mr. Tubbs** to explain the fact that the way the fund is set up, if it ever gets to \$100 million, it's capped and the tax is no longer collected, or the tax does not go into the RIT fund. **Mr. Tubbs** indicated that the original statute from 1973 says that when it reaches \$100 million, "thereafter all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance of the fund may never be

less than \$100 million." The concept was first to build the \$100 million and only use interest, at which point in time any taxes collected and deposited in the fund in excess of \$100 million shall be appropriated.

SEN. ECK then asked how close the Department is to being able to fund all the projects that apply for monies. **Mr. Tubbs** said that in this session, even with the addition of the \$2 million, the Department will not be able to fund all of the requests in the renewable resource grant loan program. In the groundwater assessment program, it does go a long way to shoring up and stabilizing that program. In regard to the orphan share fund, he said the estimates of the potential liability placed on the state with the passage of that legislation is over \$50 million.

SEN. ELLIS reiterated that the orphan share is for funding the reclamation of projects where the responsible party for the contamination no longer exists. He asked **Mr. Tubbs** whether bonding was required for oil resources. **Mr. Tubbs** replied that bonding is required in the oil and gas industry, but the fact is that those bonds sometimes fall short for the reclamation costs. He also said that the orphan share program was put in place so that a purchaser of a contaminated property could conduct the cleanup, pay for it, and then petition the state that he wasn't responsible for all of the pollution that existed on the site. The orphan share will reimburse that purchaser for those costs of reclamation of contamination that he was not responsible for creating.

CHAIRMAN DEVLIN asked **SEN. SWYSGOOD** what the balance of the trust fund is presently, **SEN. SWYSGOOD** replied that it will be \$98,879,000 by the year 2001. Right now, Fiscal '99, it is \$96,430,000. **CHAIRMAN DEVLIN** then asked if the changes that are being made will affect the flows. **SEN. SWYSGOOD** said it increases the flow into the permanent trust by about 5%.

Closing by Sponsor:

SEN. SWYSGOOD said that the Department is willing to work with the industry to try to alleviate some of their concerns about this legislation. He said that from a budgetary standpoint, it's time that the agencies come to the legislature and make their case for their budgeting process.

SEN. SWYSGOOD said that the impact as far as the General Fund is concerned is that **SB 48** takes the \$6.5 million from the General Fund that funded the trust land operation in Department of State Lands and it is now going to be offset by those monies going into the trust land account and will fund that operation, freeing up

the \$6.5 million that was funding the State Lands Department to fund the \$6.5 million of the agency budgets that were being funded by RIT. He said there is a negative impact on the General Fund and allows more money to go into those programs that have been testified to today.

SEN. SWYSGOOD said 15-38-102, legislative policy, reads, "It is the policy of the State of Montana to indemnify its citizens for the loss of long term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. This policy of indemnification is achieved by establishing a permanent resource indemnity trust as required by Article IX, Section 2 of the Montana Constitution, by supporting groundwater assessment programs from the proceeds of a tax levied on mineral extraction and by allocating spendable revenues." He said the statutes specifically state that groundwater assessment is an integral part of this whole program.

EXECUTIVE ACTION ON SB 88

Discussion:

SEN. STANG reminded the committee that this is the bill that provides for tax appeals on motor vehicles. He then introduced an amendment to the bill that would give the parties another 30 days to file appeals. The bill states that the appeal will be done at the end of the grace period, or 30 days after the due date. This amendment extends the appeal period to 30 days after the final date that payment is due. He explained that on a vehicle whose license renewal date is July 1 and has a grace period until July 31, now would have another 30 days for appeal.

SEN. ELLIS said he understood **SEN. STANG'S** desire to make this process more taxpayer friendly, but asked if it had really been a problem. **SEN. STANG** stated that there had only been seven or eight appeals statewide on motor vehicles in the last year, but that he feels that part of the problem is that taxpayers are not aware that they can appeal the valuation of their motor vehicles. He said that as people become aware of that process, there will likely be more appeals brought before the county tax appeal boards.

Motion/Vote: **SEN. STANG** moved that Amendment SB008801.alh, **EXHIBIT**(tas09a10), be approved. Motion passed 7-1 with Ellis voting no.

Motion: **SEN. STANG** moved that Amendment SB008802.alh, **EXHIBIT**(tas09a11), be approved.

Discussion:

SEN. STANG explained that **Amendment SB008802.alh** is an amendment which deals with the scheduling of appeals should **HB 82** pass.

Mr. Heiman explained that **HB 82** establishes county tax appeal board sessions that start July 1 and end December 31, and this amendment just makes **SB 88** coordinate with that schedule.

Vote: Motion carried 8-0.

Motion/Vote: SEN. STANG moved SB 88 DO PASS AS AMENDED.
MOTION CARRIED 8-0.

EXECUTIVE ACTION ON SB 61

Motion: SEN. ELLIS moved Amendment SB006101.alh,
EXHIBIT(tas09a12) .

Discussion:

SEN. ELLIS reminded the committee that **SEN. GLASER** had had some questions at hearing about the open-ended appearance of this Constitutional amendment, i.e., it could apply to any kind of property as far as assessing it at acquisition value. **SEN. ELLIS** explained that that was not the intent of the Interim Property Tax Committee, and so this limits that without specifically referencing class four properties by inserting the phrase "consisting primarily of residential property and commercial and industrial property that is not continuous property used in a commercial or industrial operation in more than one county or more than one state that is subject to central state assessment and apportionment of taxable value to the counties in which it is located."

SEN. ECK said she opposed this amendment because it gets into legislative detail that really does not belong in the Constitution. She said the Constitution is fundamental law, and this is really legislative detail. **SEN. STANG** asked **SEN. ECK** if making it read just class four property would make a difference, or if she thought the language here is sufficient to accomplish that. **SEN. ECK** replied that it would be preferable if it was just class four, but that the classification could be changed by any legislature and that that is the problem of writing legislation into the Constitution. She said her preference would be to just strike "equalize the valuations" from the Constitution.

SEN. ELLIS said that he thought it was appropriate to both limit the scope of how acquisition value is used and to insert it into the Constitution, and he urged the adoption of the amendment.

SEN. STANG said that the intent of the Interim Property Tax Committee was to limit this to class four property, and he asked **Mr. Heiman** whether this amendment really did limit this to class four property or whether it leaves it open to other properties in class four that aren't included in the amendment. **Mr. Heiman** said the problem with limiting it to class four is that class four is the catch-all for industrial, commercial, residential classes, and then there are other types of property that have been moved to other classes. He said a description could be put into the Constitution. **SEN. STANG** then asked if this includes commercial and industrial property that is centrally assessed, and **Mr. Heiman** answered that it does not, that it specifically excludes the centrally assessed industrial and commercial properties.

SEN. ELLINGSON said that the Interim Committee had heard that the biggest problem in this area was the rapidly increasing values of residences and that commercial and industrial property hasn't been increasing at such a high rate. He asked **SEN. ELLIS** whether it would be simpler to reference residential property because that is where the problem is and that simplifies the language that would be in this bill. **SEN. ELLIS** said that that basic premise is true, but the truth is that in certain instances it is not true.

SEN. ECK asked about dealing with centrally assessed property stating that that is, again, something that the Legislature can change at any time. She said that perhaps all of no. 2 could be struck because it's already been said that "equalized valuation may be achieved through the classification of property and may be based on acquisition value." The language "in the manner provided by law," could be added, and then you rely on the legislature to take care of all of the details of how you are going to assess and classify and which will be included and which will be excluded.

Vote: MOTION CARRIED 7-1 with Eck voting no (Roll call vote #1).

Motion: SEN. ELLIS moved Amendment SB006102.adb,
EXHIBIT(tas09a13).

Discussion:

SEN. ELLIS explained that when the bill is heard it will be with amendments and no fiscal note because as it is written it

references 1993. The Department of Revenue no longer has that data available, so that 1993 date cannot be used. It is unclear whether any subsequent year, as far as **SB 195**, will be found unconstitutional. Therefore, this amendment allows us to pick one of those subsequent years when we have that vote without any worry of it then being found unconstitutional.

SEN. STANG prompted a long discussion based on the last line of the amendment, "The base year value does not have to be based on market value," because he felt it should be more specific as to year. **SEN. ELLIS** explained that the purpose was to make it

possible to jump to the 1996 year, which is the basis of **SB 195**, because of the problems the Department has with 1993 valuation.

SEN. STANG stated that if we go back to the base year of **SB 195**, that was market value frozen at 2%. He said his concern is that if it doesn't have to be based on market value, then any year and any value could be used. **SEN. ELLIS** reiterated that the intent is to use a value comparable to what is being used now, which was based on market value per **SB 195**.

SEN. STANG stated that **SB 195** was based on a percentage of market value in 1993, and that if the values are not available that **SB 195** is based on, the 1996 appraisal could be used. **Brian Smith, Department of Revenue**, explained that the problem with 1993's valuation is that it is off the computer system, and a new software system is in use. It would be very difficult to bring that 1993 information back onto the Department's system.

SEN. STANG then asked how the Department could lose the 1993 values if **SB 195** is based on 2% of those values. **CHAIRMAN DEVLIN** explained that they were based on 1996 reappraisals. **SEN. STANG** then asked if 1996 was based on market value. **Gene Walborn, Department of Revenue**, said that the Department's concern was that the values were based on 1996, but since 1996 there have been changes in property records, new construction, et cetera, and **SB 195** requires that the property be appraised at market value for 1998. It is necessary then to work backwards to get a starting point for the 1997 value and start phasing that forward. He explained that if we went back to the 1997 value for those pieces of property that have new construction, it would be a phased-in value, it would not be a market value for that tax record for that one piece of property. **CHAIRMAN DEVLIN** said that after the 2% has been applied for a couple years, it probably is not considered a market value any longer. **Mr. Walborn** agreed that that was correct. The starting point is being phase up, it's not the market value.

SEN. STANG said he was going to oppose the amendment just because of the last line. He said it leaves it too open if it doesn't have to be market value, which means the legislature could pick a number out of the air.

SEN. ELLIS said that the Department can resurrect the 1993 numbers, but the data is not on the computer system and it would be a long and expensive process to pull those up. He said that if a subsequent year based on **SB 195** adjustments is used, it will not radically change valuations. **SEN. STANG** then reiterated that this sentence does not specify what is going to be used. It is very open-ended. **CHAIRMAN DEVLIN** asked **SEN. STANG** if it would be agreeable if it said something more specific, a value that was arrived at by the implementation of **SB 195**. **SEN. STANG** said that would be better.

CHAIRMAN DEVLIN then asked **Mr. Heiman** what would happen if that was specified. **Mr. Heiman** said that language that says a base year value could be used that is a value that has been used as a result of the adjustments made in **SB 195**, or that have been used for taxation purposes in subsequent years. **CHAIRMAN DEVLIN** then explained that if this amendment is not added, the Department has to recover 1993 values, and they say that it will be very time-consuming and very expensive. That is why the Department has requested the 1996 plus the 2% phase-in to arrive at a value specific.

Mr. Heiman then suggested that the language read that "the base year value may be based on the taxable values of any previous tax year."

SEN. EKEGREN then asked whether the committee could just pick a year right now, and **Mr. Heiman** said his understanding was that the implementation bill had been done. **SEN. STANG** said that specifying a year would be more palatable. He asked if the Department could explain what the ramifications would be of using the values of 1996 as adjusted by **SB 195**, and the Department said they would provide that information.

SEN. DEPRATU said that his concern with just using 1996 without being able to tie it to **SB 195** is then you would have the inflated appraised values, and that could be disastrous. He suggested that there should be some wording that would tie it to **SB 195**. **CHAIRMAN DEVLIN** thought that the base year valuation is appraisal 1996 adjusted by **SB 195** provisions.

SEN. ELLINGSON asked about the mechanics of **SB 195**. He recalled that it accepted the 1996 valuations but said that the increase

would be put into effect at the rate of 2% per year but that that is in reference to the prior appraisal. He asked if the prior appraisal is 1993, why those figures are not available. **Ms.**

Bryson explained that the Department maintains the prior year's information, but not ten years' worth of prior information. When yearly cycle control is done, the information is rolled over and during the reappraisal process that information is maintained. However, there was a new appraisal in 1996, so at the start of 1997, the new appraisal information was rolled in. She explained that the information the Department has available to them is the value before reappraisal, which is the 1996 determination of the 1993 value adjusted for new construction, adjusted for some market changes and cost factors. **CHAIRMAN DEVLIN** then asked if the Department has the numbers for 1996, and **Ms. Bryson** responded that the Department has the value before reappraisal.

SEN. STANG then asked if the value before the 1996 reappraisal is still market value. **Ms. Bryson** said that that is the 1993 values including the new properties. **SEN. STANG** then asked why that cannot be used. **SEN. ELLIS** said that when the Department adjusted 1993 to 1997, in essence 1996 was adjusted to 1997 because 1996 was based on 1993 but had the input of all the new property, all the changes to existing property, all the adjustments that had been made in the intervening year, but were still using the market base comparisons of 1993. They do have the 1996 information. **CHAIRMAN DEVLIN** suggested that that might be the appropriate handling of the matter. That does not reflect the new reappraisal, nor does it reflect **SB 195**, but it does reflect all the properties brought up to date.

SEN. STANG agreed that that value is more the value that the Interim Property Tax Committee had in mind. **CHAIRMAN DEVLIN** said that the last line could be changed to "the base year value is 1996." **Mr. Heiman** agreed that that could be done as long as things that have happened since 1996 were taken into account, which would probably be the market value of those post-1996 changes.

SEN. ECK then asked how much difference there was between 1996 and 1998, which would include all those changes, and **Ms. Bryson** explained that it's the 2% increase plus any new construction or modifications or improvements to the property. However, 1998 values as used today are not market values and neither are 1996.

SEN. ELLIS said that what the Department of Revenue would like to use is the valuations, whether it's 1998 or subsequent, that are in place at the time of the election. He said he felt that basing it on 1997 values, or something other than current, would

make a difference on how people would reflect on this issue.

CHAIRMAN DEVLIN then asked **Mr. Heiman** if the amendment could be rewritten to reflect 1996, and **Mr. Heiman** said that was possible, but that 1996 may not reflect situations where the value actually did go down.

SEN. STANG said that perhaps figures somewhere before 1996 could be used so that those inflated values were not included. **Ms. Bryson** said that what was on the system was the value before reappraisal, so that has been adjusted in some cases for changes in property improvements and a determination of what the growth would have been, trying to bring that number back to 1993. The Department does have some of what has been called 1996 values, but there are some adjustments on some of those. It's not clean.

SEN. STANG asked if the 1996 values were the values based on **SB 195**, or whether those were the values before **SB 195** was applied. **Ms. Bryson** said those would be the values in place prior to the implementation, but that certain properties have been adjusted back to what is called value before reappraisal. They're not based on 1993 market. **SEN. STANG** then asked if any of the 1996 values are subject to **SB 195** applications, or do they stand as before **SB 195** was applied. **Ms. Bryson** suspected that 1996 values are before reappraisal. That would include some of those properties decreased in value and now you have locked into place the 1996 values which has those properties included.

SEN. DEPRATU wondered if going back to the original amendment and using the line "the base year value does not have to be based on market value," but in some way turning that around to bring it within the last five years to tie it down to a time frame and then let the system work with that. **CHAIRMAN DEVLIN** said that the amendment says that the legislature shall determine by law the base year value. **SEN. DEPRATU** wondered if limiting it to the last five years would take away some of the open-endedness.

SEN. ELLINGSON brought up the issue of the constitutionality of what is put into a Constitutional amendment. If it's put into a Constitutional amendment and it's passed, it becomes Constitutional. On the other hand, we do need to be sensitive to the equities involved for those folks whose market values have actually dropped. He also mentioned that the amendment says it does not have to be valued on market value, but it does not say what it has to be based on. He said that by not specifying what this will be based on, there's a certain amount of uncertainty about what the legislature will do. He said he feels there needs to be some specifics.

SEN. ECK said that saying that "the base year may be based on factors other than market value," market value and equalization value can be anything that the legislature says it is, whether it really equalizes or not. **SEN. ELLIS** proposed the following for a substitution for the last line: "The base year may be based upon an adjustment to market value that has been subsequently adopted by the legislature." **Mr. Heiman** questioned the "subsequently adopted by the legislature," whether that means that the legislature has adopted something between now and when the amendment goes into effect and that's the method to be used, or whether it's the 1993 or 1996 or a combination of 1996 and 1998. He suggested removing "subsequently," making the amendment read, "The base year value must be based on an adjustment to market value that has been adopted by the legislature." **SEN. ELLIS** moved that as an amendment to the amendment.

Motion/Vote: **SEN. ELLIS** moved that Amendment 6102.adb with the change to the last line be adopted. Motion carried 9-0.

Motion: **SEN. ELLIS** moved SB 61 DO PASS AS AMENDED.

Discussion:

SEN. ELLINGSON asked **SEN. ELLIS** if in the companion legislation there is reference to the requirement of revaluation at market value of commercial properties after 20 years was included. **SEN. ELLIS** responded that as far as corporate property or partnership property, any time there is a change of 50% of the ownership, there is a reappraisal. **SEN. ELLINGSON** wanted to be reassured that that is in the companion legislation, and asked why it should only be in the companion legislation as opposed to the Constitutional amendment. **SEN. ELLIS** said that businesses usually do not see the astronomically large increases in value that residences do, and he said that acquisition value actually levels out the increase in assessed valuation.

SEN. BOHLINGER said that his only concern about acquisition value was a concern raised by the landlords regarding the inflationary spiral that could arise in the cost of rental properties. **SEN. ELLIS** said that taxes are not the issue in this situation. He said anyone who is new to providing this kind of property has a disadvantage to someone who has had it a long time because of the initial cost. These properties are not going to sell for less than they can make for the owner. **SEN. BOHLINGER** said he still had a problem with what he perceives as a spiral in the cost of rental property. **SEN. DEPRATU** said he felt that a place that provides low rent generally doesn't have a great increase in valuation in those type of places unless the character of the

place has changed in its entirety, so there isn't much change in the tax rate because they just won't generate the rents that would cause that increase.

SEN. ELLIS said that the implication of the two opponents was that the mill rate and the taxes would go up. In fact, class four only pays 40% of the taxes in the state, so giving a break to those people who own property in class four is not going to dramatically change the rate of taxation. He said he feels it is a wrong assumption to assume these taxes are going to inflate dramatically, because there are a lot of other classes of taxable property that are bearing the load. He said it is his feeling that this reduces those kinds of shifts and makes them proceed at a much slower pace rather than the dramatic pace that has been seen every time we have a reappraisal.

SEN. ECK brought up the 1% a year limitation in increase. She said that inflation could cause that 1% to not be enough to fund counties. **SEN. BOHLINGER** said he liked the idea of 1% in that if a period of higher inflation might build a more solid case for expanding the tax base. He said he would like to ease the burden of financing education by the homeowner, and this might introduce the possibility of another source of revenue.

SEN. GLASER stated that the net effect of Proposition 13 in California is that people that have been in a house longer than their neighbors have their tax obligation subsidized by their newer neighbors, and landlords who hold property longer have an advantage in that the landlords that are new subsidize their taxes. He said children are subsidizing parents, new businesses are subsidizing old businesses, and he wondered how that was going to be addressed. **SEN. ELLIS** said that in reality all other tax classifications are subsidizing homeowners. Class four property is 61% of the property in the state but only pays 40% of the taxes. The reason this actually reduces that kind of impact is because there is not a need to adjust the multiplier.

CHAIRMAN DEVLIN stated that this is just one solution that has come from the Interim Property Tax Committee. The legislature is trying to avoid something in the nature of things like **CI-27** which abolished property taxes, and with the ease CI-75 passed this time, it is time something is done to make people aware that the legislature is indeed serious about doing something about their taxes.

SEN. ELLINGSON said that according to charts he received during the Interim Committee, class four properties pay 53%, but do have 61% of the assessed value. So there really is not a subsidization taking place. He also said that over time the

share of all property taxes which has fallen on class four property has increased over a 25-year period from 35% in 1972 to 53% in 1997, which explains why residential homeowners are upset.

SEN. ELLINGSON then asked how the implementing legislation relates to the amendment itself, whether the implementing legislation in this session has to be passed if we pass the proposed amendment to the Constitution. **Mr. Heiman** said that it depends upon the Constitutional amendment that is being considered and the effective date of that Constitutional provision. This amendment becomes effective January 1, 2001, which means that the next legislative session would have the ability to make implementing legislation or change implementing legislation.

SEN. ELLINGSON then said that he is concerned about the 1% inflation rate and that the implementing legislation provides for the reappraisal of commercial property if it has not been sold within a 20-year period. He suggested that that ought to be a part of the Constitutional amendment so that the voters of the state would know that this is designed clearly to be of benefit to residential property owners who have borne the burden of such rapidly increasing market values and not others.

SEN. STANG said that one of the things that the California people had said in the Interim Committee is that since Proposition 13 passed, there's been somewhere around 160 amendments. In California the taxes have not gone up, but their fees have increased substantially. **CI-75** would protect against that. He said he would support **SB 61** even though it is not a perfect solution, but that there are laws on the books that would help make it a better solution.

SEN. ELLIS said that it was his understanding that every time 50% ownership of corporation property is sold, it is reappraised.

SEN. STANG said his concern is when people sell less than 50% of that corporate ownership on a day-by-day basis, it was not covered.

Vote: Motion carried 7-2 with Eck and Ellingson voting no (Roll call vote #2).

ADJOURNMENT

Adjournment: 10:45 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas09aad)